

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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|                           |   |                   |
|---------------------------|---|-------------------|
| In re:                    | ) | Case No. 04-50618 |
|                           | ) |                   |
| JAMES W. PAULSEN, JR. AND | ) |                   |
| JULIANNE V. PAULSEN,      | ) | Chapter 7         |
|                           | ) |                   |
| Debtors.                  | ) |                   |
|                           | ) |                   |

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**NOTICE OF MOTION AND MOTION OBJECTING  
TO PROPERTY CLAIMED AS EXEMPT**

1. JP Morgan f/k/a The Chase Manhattan Bank NA, as Trustee for Residential Funding Corporation and its duly appointed servicer and attorney-in-fact, Homecomings Financial Network, Inc., (“Homecomings”) moves the court for the relief requested below and give notice of the hearing.

2. The court will hold a hearing on this motion at 2:00 P.M. on September 8, 2004, before the Honorable Gregory F. Kishel in Courtroom No. 2 at the United States Courthouse – District of Minnesota, 515 West First Street, Duluth, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 3, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 30, 2004 which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, 11 U.S.C. § 522 and 542, Fed. R. Bankr. P. 5005, 9013, 9014 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 was filed on May 25, 2004. The case is now pending in this court.

5. Homecomings objects to the Debtors' claim for exemption for property located at 418 East 21<sup>st</sup> Street in Hibbing, Minnesota ("Property") under Minnesota Statute §§ 510.01 and 510.02. Homecomings objects to the exemption on the following grounds: (1) the Debtors do not have any equity in the Property; and, (2) the Property is not the Debtors' homestead.

6. With respect to the first objection, the Debtors acknowledge on Schedule C of their Chapter 7 petition that the value of the Property, for which they claim an exemption, is zero. Accordingly, they have no equity to preserve.

7. With respect to Homecomings second objection, it is evident that the Debtors are not using the Property as a homestead. For property to be classified as homestead, the house must be "owned and occupied by a debtor as the debtor's dwelling place." Minn. Stat. § 510.01. The Debtors did not occupy the Property on the date of filing because they claim it is inhabitable and at the first meeting of creditors, the Debtors admitted that they no longer occupy the house and have no intention of returning to live at the Property. Moreover, to the extent the Debtors may have ever occupied the Property at one time as a homestead, they have abandoned it. *See* Minn. Stat. § 510.07 (homestead abandoned if not occupied for six months and notice of homestead not properly filed with county recorder).

8. Homecomings reserves the right to amend and further supplement this objection at any time prior to the closure or dismissal of the Debtors' case.

WHEREFORE, Homecomings moves the court for an order sustaining its objection to Debtors' claimed exemption and such other and further relief as the court may deem just and equitable.

Dated: August 18, 2004

**BRIGGS AND MORGAN, P.A.**

By: 

Lisa M. Agrimonti (#272474)

2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402  
(612) 977-8400

**ATTORNEYS FOR JP MORGAN F/K/A  
THE CHASE MANHATTAN BANK NA, AS  
TRUSTEE FOR RESIDENTIAL FUNDING  
CORPORATION AND HOMECOMINGS  
FINANCIAL NETWORK, INC.**

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|                           | ) |                   |
| Debtors.                  | ) |                   |
|                           | ) |                   |

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**ORDER**

At Duluth, Minnesota, on September 8, 2004.

Upon the objection of Homecomings Financial Network, Inc., to property claimed as exempt and upon all the files and records of the proceedings herein,

**IT IS ORDERED:**

Homecomings Financial Network, Inc.'s objection is sustained and the property located at 418 East 21<sup>st</sup> Street in Hibbing, Minnesota is not exempt.

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Honorable Gregory F. Kishel  
United States Bankruptcy Judge

**AFFIDAVIT OF SERVICE BY U.S. MAIL, FACSIMILE AND MESSENGER**

STATE OF MINNESOTA    )  
                                      ) ss.  
COUNTY OF HENNEPIN    )

Bky Court File No. 04-50618

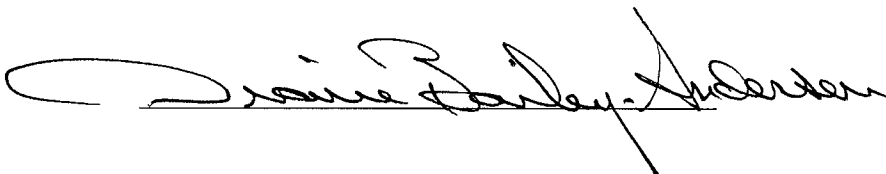
Diane Bailey-Andersen, being first duly sworn, deposes and states that on the 18th day of August 2004, she served a copy of the following document(s):

NOTICE OF MOTION AND MOTION OBJECTING TO  
PROPERTY CLAIMED AS EXEMPT and PROPOSED ORDER

upon:

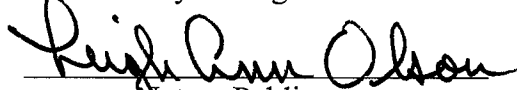
SEE ATTACHED DISTRIBUTION LIST

(which are the last known addresses of said parties) by depositing a true and correct copy postage prepaid in the United States Mail.



Subscribed and sworn to before me

this 18th day of August 2004.

  
Notary Public



**DISTRIBUTION LIST**  
**Court File No. 04-50618**

**Via U.S. Mail**

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**Via Facsimile & Messenger**

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I.G.A.T. Diamonds, Inc.  
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United States Trustee  
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Robert R. Kanuit, Interim Trustee  
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Hermantown, MN 55811